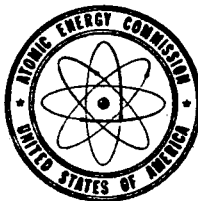


February 5, 1971

SECY-R 147



DUKE POWER COMPANY
(OCONEE NUCLEAR STATION UNITS 1, 2 AND 3)
DOCKET NOS. 50-269-A, 270-A AND 287-A

Note by the Secretary

1. Attached for the information of the Commission is a copy of REPLY OF THE AEC REGULATORY STAFF TO JOINT PETITION OF ... certain municipalities in North Carolina.

2. The Joint Petition was issued as SECY-R 135.

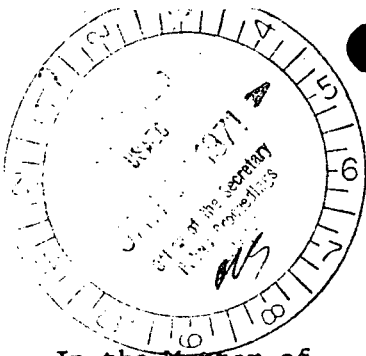
W. B. McCool

Secretary of the Commission

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DOCKET
PROD. PARTIAL

50-269-A
50-270-A
50-287-A

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

BEFORE THE COMMISSION

In the Matter of

DUKE POWER COMPANY

(Oconee Nuclear Station,
Units 1, 2 and 3)

)
)
)
)
)
)

Docket Nos. 50-269
50-270
50-287

REPLY OF THE AEC REGULATORY STAFF TO JOINT PETITION OF
THE MUNICIPALITIES OF STATESVILLE, HIGH POINT,
LEXINGTON, MONROE, SHELBY, ALBEMARLE, CORNELIUS,
DREXEL, GRANITE FALLS, NEWTON,
AND LINCOLNTON

On December 29, 1970, a "Notice of Receipt of Application for Facility Operating License" in the captioned dockets was published in the Federal Register (35 F.R. 19708). That Notice provided, in pertinent part, that:

"Pursuant to subsection 105c.(3) of the Act, any person who intervened or who sought by timely written notice to the Commission to intervene in the construction permit proceedings for these facilities to obtain a determination of antitrust considerations or to advance a jurisdictional basis for such determination has the right to obtain an antitrust review under section 105c. of the Act, of the application for an operating license for these facilities, upon written request to the Commission made within 25 days after the date of publication of this notice..."

The eleven North Carolina municipalities listed in the heading have filed a joint petition dated January 18, 1971, seeking an antitrust review in accordance with the foregoing notice, and the transmittal of the license application and the petition to the Attorney General. The petitioners

also sought leave to intervene and requested a hearing. As relief, the petitioners asked denial of the applications or conditioning of the licenses on antitrust grounds.

The eleven municipalities were joint intervenors in the construction permit proceedings in these dockets, at which time they challenged, inter alia, the consideration of the application under section 104b. rather than section 103 of the Act. Thus, they at that time sought a "determination of antitrust considerations or to advance a jurisdictional basis" therefor.^{1/} The municipalities are within the class who are entitled to request such a review pursuant to subsection 105c. (3) of the Atomic Energy Act of 1954, as amended (the Act). Their request for an antitrust review is timely.

Accordingly, we will, in accordance with 10 CFR 2.102(d)(1), promptly transmit the eleven municipalities' joint petition and Duke Power Company's application to the Attorney General pursuant to section 105c. of the Act.

In our view, the requests to intervene and for a hearing on antitrust matters are premature. Such requests would be appropriate following the antitrust review under section 105c. Section 2.102(d)(3) of the Commission's "Rules of Practice," 10 CFR Part 2, provides that the Attorney

^{1/}

See the joint petition of the eleven municipalities et al. for leave to intervene in this matter dated August 10, 1967, and the accompanying motion to dismiss for lack of jurisdiction. The eleven municipalities were granted leave to intervene by an order of the atomic safety and licensing board dated August 28, 1967.

General's advice or a notice that the Attorney General has not rendered any such advice will be published in the Federal Register. In either event, the opportunity would be afforded for any person whose interest may be affected to intervene and request a hearing on antitrust aspects of the application.

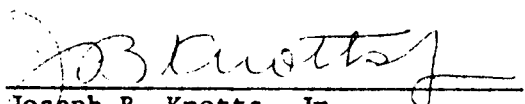
Accordingly, the petition, insofar as it requests intervention and a public hearing on antitrust matters at this time, should be dismissed, but with leave to the joint petitioners to renew their requests or file an amended petition at the appropriate time as described above.

The staff would point out, in addition, that the petition does not appear intended to seek intervention and a hearing on matters outside the sphere of asserted antitrust considerations. Specifically, no contentions are asserted relating to the matters, including the health and safety of the public or the common defense and security, which are embraced within the Notice of Proposed Issuance of an Operating License for Duke Power Company's Oconee Unit No. 1 (Docket No. 50-269) which was published in the Federal Register on January 8, 1971 (36 F.R. 296). In accordance with subsection 105c.(8) of the Act, and as stated in the Notice of Proposed Issuance published January 8, 1971, an operating license, containing appropriate conditions relating to antitrust matters as provided in 10 CFR 50.55(b), may be issued for Oconee Unit No. 1 in advance of consideration of and findings with respect to antitrust matters. The instant petition would not affect

that procedure. As required by subsection 105c. (8) of the Act, if a license were issued pursuant to the foregoing procedure, the license conditions in accordance with 10 CFR 50.55(b) would assure that any subsequent findings and orders of the Commission with respect to antitrust matters will be given full force and effect.

The staff would suggest that the Commission: (1) note that the eleven North Carolina municipalities are entitled to request antitrust review pursuant to section 105c. of the Act, that they have timely requested such review, and that the staff will promptly take appropriate action to initiate such review by the Department of Justice; and (2) dismiss as premature, but without prejudice, that much of the petition as requests intervention and a public hearing on antitrust matters at this time.

Respectfully submitted,


Joseph B. Knotts, Jr.
Counsel for AEC Regulatory Staff

Dated at Bethesda, Maryland,
this 28th day of January, 1971.

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